In regard to the first point, a corporation ordinarily has no implied power to subscribe to stock of a corporation in the process of organization. *Smith* v. *Newark, etc. R. Co.* (1894) 8 Ohio Circ. Ct. Rep. 583; *Martin* v. *Ohio Stove Co.* (1898) 78 Ill. App. 105. And it has been held that express power to invest in stocks gives no power to subscribe to the stock of a new corporation, *Commercial F. Ins. Co.* v. *Florence Cotton Co.* (1891) 99 Ala. 1. According to the principal case the same objection may be urged against a subscription to new stock of an old corporation.

The second point is a new application of a principle which seems to have become well established. At common law stock could not be voted by proxy. *Taylor* v. *Griswold* (1834) 14 N. J. L. 222; *Com.* v. *Bringhurst* (1883) 103 Pa. St 134. More recently voting trusts, under which stock is given in trust to vote as persons not the owners of it direct when there is no legitimate pooling of interests, have been held void. *Shepaug Voting Trust Cases* (1890) 60 Conn. 576; *White* v. *Thomas Tire Co.* (1893) 52 N. J. Eq. 178. The objection appears to be that there is no necessary connection between the government of the corporation and any large interest in the stock. The present case comes squarely within that principle. The directors of the two corporations would be under no obligation to hold individually more than the shares required to qualify them as directors; and while in theory they would be voting as agents of the corporation, in fact they would vote free from all control. The situation, even if entered into with the best of faith, would be full of danger to the stockholders, and therefore one in which the corporation ought not to be placed. The same objection to the directors' voting the corporate holdings cannot be urged where there is no interchange of control, because there the directors can be made responsible.

As the decision is the first in a new field, it suggests and leaves unanswered many interesting and important problems; for example, the rights of stockholders if two corporations should, in the course of occasional investments, find themselves accidentally in possession of a majority of one another's stock.

REAL PROPERTY—DELIVERY OF DEED TO THIRD PERSON FOR GRANTEE NOT IN ESSE.—It has recently been held by the Supreme Court of Utah that a deed conveying land to a corporation not *in esse* at the time of the execution of the deed, placed by the grantor in the hands of a third person with instructions to deliver the same to the grantee when organized and so delivered by the third person, is admissible as *prima facie* evidence of title in the grantee in a suit attacking the title collaterally. *Santaquin Mining Co.* v. *High Roller Mining Co.* (1903) 71 Pac. 77. The court proceeds apparently upon the assumption that the grantor's intention was to constitute the depositary his agent to deliver to the grantee, when the latter came into being.

In *Taw* v. *Bury* (1558) Dyer 167, *b*, a distinction is made between a delivery to a third person to the use of the grantee and such a delivery where the instrument was to be redelivered as the grantor's deed upon condition performed. This distinction has been fully estab-

lished by later authority in England and America. Sheppard's Touchstone, 58–9; *Doe d. Garnons* v. *Knight* (1826) 5 B. & C. 671 (at 692–5); *Wheelwright* v. *Wheelwright* (1807) 2 Mass. 447. It appears, then, that where a deed is placed by the grantor in the hands of one not a party thereto, for delivery to the grantee, the transaction may assume one of three aspects: a delivery to the depositary as agent for the grantee, a delivery in escrow, or a mere entrusting of the instrument to an agent of the grantor with instructions to deliver. Whether the transaction takes one or the other of these forms is a question of fact. As a deed operates only from delivery, the crucial question is, when did the grantor actually or constructively give up possession of the instrument with the intent that it should take effect as his deed. *Wheelwright* v. *Wheelwright* (*supra*); *Trask* v. *Trask* (1894) 90 Iowa 318.

By the weight of authority a deed delivered to a third party for the grantee, the grantor parting thereby with his control over the instrument, takes effect as the grantor's deed *in præsenti*: *Doe d. Lloyd* v. *Bennett* (1837) 8 C. & P. 124; *Foster* v. *Mansfield* (1841) 3 Metcalf (Mass.) 412; *Bryan* v. *Wash* (1845) 7 Ill. 557. The two cases last cited represent two theories as to the acceptance by the grantee, necessary to complete the delivery. *Foster* v. *Mansfield* holds that before acceptance the instrument does not take effect as a deed, but that, when accepted, it takes effect by relation from the first delivery. In *Bryan* v. *Wash* the acceptance is presumed on delivery to the depositary, the grant being beneficial to the grantee, *i. e.* an unconditional gift. Under the latter theory a deed delivered absolutely to a third party for a grantee not *in esse* at the time of the delivery could not, it seems, vest title in the grantee subsequently: *Morris* v. *Caudle* (1899) 178 Ill. 9; *Davis* v. *Hollingsworth* (1901) 113 Ga. 210; *Realty Co.* v. *Whitney* (1901) 106 La. 257. But under the Massachusetts view, the courts of that State have intimated that a subsequent acceptance by a corporation not *in esse* at the time of delivery, would be valid: *Rotch's Wharf Co.* v. *Judd* (1871) 108 Mass. 224.

A delivery in escrow presupposes a complete deed the operation of which is merely suspended until the performance of some condition, imposed, according to most authorities, by the grantor upon the grantee: *Deardorff* v. *Foresman* (1865) 24 Ind. 481, at 492; *Fitch* v. *Bunch* (1866) 30 Cal. 209. A delivery to the depositary upon a mere collateral contingency is considered not an escrow but a present deed: *Sheppard's Touchstone*, 58–9; *Foster* v. *Mansfield* (*supra*); *Arnegaard* v. *Arnegaard* (1898) 7 N. D. 475.

There are several objections to upholding a deed delivered in escrow to a grantee not *in esse*. The deed could not be considered complete, on such delivery, for lack of proper parties, and there seems to be a logical difficulty in holding that the grantor may impose upon a grantee not *in esse*, the condition that the latter shall come into being. No case appears to have arisen in which an attempt to do so has been made.

Where the depositary is merely the agent of the grantor to deliver, the latter retaining the control of the deed and being in a position to revoke it at any time, there would seem to be no doubt that a delivery by the agent after the grantee comes into being would be valid. This

seems to be the view taken of the transaction in the principal case, and in *Spring Garden Bank* v. *Hulings Lumber Co.* (1889) 32 W. Va. 357.

The validity of the several forms of delivery above discussed will, as a rule, become material only when, as in the principal case, the controversy is between the grantee and a stranger. As between grantor and grantee, an estoppel will usually arise.—*Dyer* v. *Rich* (1840) 1 Met. (Mass.) 180; *Benevolent Society* v. *Murray* (1898) 145 Mo. 622,—save (*semble*) in cases where the grantee never had capacity to take the property conveyed,—*Russell* v. *Topping* (1850) 5 McLean (Ind.) 194 at 202,—or never had a legal existence,—*Harriman* v. *Southam* (1861) 16 Ind. 190.